

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Theodore James Kolk, et al.,

Case No. 23-cv-1860 (JRT/LIB)

Plaintiffs,

v.

**REPORT AND RECOMMENDATION**

Erin Young, et al.,

Defendants.

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This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

On August 21, 2023, this Court entered an Order directing Plaintiff Theodore James Kolk to pay an initial partial filing fee of at least \$33.05. (See Order [Docket No. 9] at 3). The Court gave Plaintiff thirty days—that is, until September 20, 2023—to pay the fee. (See Id.). The Court forewarned Plaintiff that if he failed to make the initial partial filing fee in the time permitted, the Court would recommend dismissing this matter without prejudice for failure to prosecute. (See Id.).

That deadline has now passed, and the initial partial filing fee has not been paid. Accordingly, this Court now recommends dismissing this action without prejudice, under Federal Rule of Civil Procedure 41(b), for failure to prosecute. See, e.g., Henderson v. Renaissance Grand Hotel, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). Given this recommendation, the Court also recommends denying as moot the pending Motions at Docket Nos. 3, 4, and 7.

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. This action be **DISMISSED without prejudice** under Federal Rule of Civil Procedure 41(b) for failure to prosecute; and
2. This action’s currently pending motions—at Docket Nos. 3, 4, and 7—be **DENIED as moot.**

Dated: October 26, 2023

s/Leo I. Brisbois  
Hon. Leo I. Brisbois  
United States Magistrate Judge

#### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).